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Extending temporary protective proceedings through Covid-19 pandemic

By Laura Nelson, Attorney at Law

It is clear from researching court orders and procedures on temporary protective proceedings that we all assumed COVID-19 related closures and procedures would be temporary. My dad used to have a saying: “It’s only temporary unless it works.” While that might’ve worked for the paper clip he used to hold some belt together under the hood of our old family Buick, the statute is clear: temporary means thirty days. [ORS 125.600](#). Now that COVID-related court changes are lasting more than the thirty days, we are leaning more toward my dad’s philosophy with respect to “temporary” measures and fixes. While the statute hasn’t changed with respect to the procedure for obtaining a temporary guardianship and/or conservatorship, the method has changed drastically. Who knew three simple subsections of ORS 125 could present a practitioner with so many challenges?

I have to confess that I am in no way an expert with respect to temporary protective proceedings during COVID. I have only done one in Multnomah County, and the process hasn’t changed all that drastically. When I “phoned a friend” for other counties’ perspectives, I got

a range of answers, but the challenges for practitioners landed squarely within two major issues: navigating new court procedures and serving the respondent and interested parties. I hope to provide some tips, tricks, and resources for those seeking temporary guardianship and/or conservatorship while we navigate these “unprecedented times.”

Navigating court procedures

As a frequent participant in remote hearings (including Webex and phone hearings), I’ve observed a lot of “do’s and don’ts.” First, make sure to turn off your microphone while you’re waiting for the hearing, while the judge is not specifically addressing you, or while making argument, questioning witnesses, or objecting. Second, if you’re feeling concerned about what you look like or sound like, try a practice run with that software, or Zoom. Third, don’t be like me in a recent hearing with laundry in the background (luckily it was clean), or like the counsel whose dog popped up in his video (cute dog, by the way).

Phone and remote hearings present special challenges, and you need to make sure you prepare your client well. It is crucial that your client knows how to mute the phone when not being directly addressed. I recommend setting up a chat system either through email or text so that you can instruct him or her and answer questions. It’s so hard to not have a virtual notepad to slide back and forth.

In addition to jumping through the hoops of filing and potentially having an in-person, Webex, or phone hearing on

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Temporary protective proceedings

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Laura Nelson is an associate at Samuels Yoelin Kantor LLP, where she is a member of the estate planning team. She works with her clients on matters regarding estate planning, estate and trust administration, and guardianships.

For several years, she served on the board of CDM Caregiving Services, a nonprofit organization that provides in-home care for the elderly, the disabled, and those with dementia or traumatic brain injury. She is often a speaker on the topic of guardianship issues.

When not in the office or volunteering her time, Laura enjoys hiking, camping, traveling, and spending time with her family.

the initial appointment and any extensions, practitioners also must consider the Uniform Trial Court Rules, the Supplemental Local Rules (SLR), and other COVID-related orders. Accompanying the article is my rough chart of the SLR and county-specific rules with respect to temporary guardianship and conservatorships and COVID direction.

Service issues

The statute requires that the respondent be personally served with notice of the proceeding either before the temporary order is entered or shortly after. This can be particularly challenging with respondents who are missing or are in a

facility that is locked down. I have found that working with a creative process server and thinking outside the box for service can help in these situations. You can also move for alternative service, time permitting.

Each county is seemingly addressing temporary protective proceedings differently, so if you're practicing out of county or filing one of these for the first time, I strongly recommend checking the local rules, calling the local probate coordinator or civil clerk to determine how to proceed, and consulting with a local practitioner to make sure you're following the process correctly. ■

County	SLR	Additional COVID direction
Baker	NA	Order implementing "level 2" restrictions on court operations (see Chief Justice Order 20-016)
Benton	Rule 9.082	NA
Clackamas	Rule 9.075	Link to COVID-19 Court Information
Clatsop	NA	Order implementing "level 2" restrictions on court operations (see Chief Justice Order 20-016)
Columbia	NA	Presiding Judge Order implementing COVID restrictions
Coos	NA	Order requiring protective face coverings
Curry	NA	Order requiring protective face coverings
Josephine	NA	Presiding Judge Order 20-010 modifying Josephine County Circuit Court operations
Lake	NA	Order implementing "level 3" restrictions on court operations (See Chief Justice Order 20-016)
Lane	NA	Presiding Judge Order 2020-04 modifying court operations
Lincoln	NA	Presiding Judge Order 20-04 modifying court operations
Linn	NA	Presiding Judge Orders 20002, 20005, 20007, and 20004 modifying court operations
Malheur	NA	Presiding Judge Orders 2020-10, 2020-08, 2020-06, 2020-04, 2020-03, 2020-02, 2020-01, and 2020-07 modifying court operations
Marion	NA	No SLRs on temporary guardianship; Link to several court orders modifying court operations
Multnomah	9.75 and 9.025	Link to Court Operations During Covid-19
Polk	NA	Order modifying court hours
Washington	NA	Order implementing "level 3" restrictions on court operations (see Chief Justice Order 20-016)
Yamhill	NA	Several orders modifying court operations
No direction: Crook, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jackson, Jefferson, Klamath, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler		

Can a guardian be paid to provide Medicaid-funded in-home care services to a protected person?

By Julia Greenfield, Attorney at Law



Julia Greenfield is an attorney with the Law Offices of Nay & Friedenbergl. Her legal career has focused on representation of Medicaid applicants and recipients who need long-term care services.

Prior to joining the firm, Julia worked for Disability Rights Oregon and Legal Aid Services of Oregon.

Julia finds her work to be particularly compelling in light of her personal experience with family members with special needs and dementia.

Julia practices in the areas of Medicaid, special-needs planning, elder law, and estate planning.

Note:

Individuals who receive OSIPM Medicaid-funded Home and Community Based Services (HCBS) through the Aging and Physical Disability (APD) system or the Intellectual and Developmental Disability (I/DD) system may receive caregiving services in their homes. (Services provided to individuals via the DHS mental health / behavioral health system are not Medicaid-funded OSIPM services, and are beyond the scope of this article.) An individual who receives in-home care services may want to hire a friend or family member as a caregiver. Oregon's HCBS Medicaid waivers allow family members to be paid service providers. However, note that an individual's spouse can work as a Medicaid-funded service provider only in very limited circumstances. See [OAR 411-027-0020\(5\)](#) and [OAR 411-030-0080](#).

But what if the individual is a protected person, and the protected person's preferred caregiver is also his or her guardian? Neither the APD rules nor the I/DD rules prevent a guardian from also working as the protected person's Medicaid funded in-home care provider, with one major caveat: a guardian may be paid to provide Medicaid-funded services to a protected person only if someone other than the guardian has been designated as the protected person's "representative" for the purposes of developing and authorizing the protected person's service plan and serving as the employer of the individual's service providers.

Oregon Supplemental Income Program –Medical (OSIPM) Home and Community-Based Services

[OAR Chapter 411, Division 4](#) provides standards for delivery of Medicaid-funded Home and Community-Based Services, which include the in-home care services provided to elders and people with physical disabilities through the APD service system, and to people with intellectual and developmental disabilities through the I/DD service system.

HCBS services for elders and people with physical disabilities include "homecare worker" services. APD rules that address in-home HCBS services are found at [OAR Chapter 411, Division 30](#). A Homecare Worker (HCW) is "a provider ... directly employed by an individual to provide hourly in-home services to the eligible individual." Services provided by the HCW are determined based on assessment of the individual's needs, and may include assistance with various activities of daily living (eating, dressing and grooming, bathing and personal hygiene, mobility, elimination, and cognition) and instrumental activities of daily living (laundry, shopping, transportation, medication management and meal preparation). Services are delivered pursuant to a service plan written by the case manager with the individual's input and approval. Although HCWs are paid by DHS, they are considered employees of the individuals they serve.

HCBS services for people with intellectual and developmental disabilities include the services of a Personal Support Worker (PSW): a person "hired or selected by an individual or their representative ... for the purpose of delivering services to the individual in the home or community of the individual." [OAR 411-317-0000\(160\)\(a\)\(B\), \(C\)](#).

PSWs assist eligible individuals with activities of daily living, instrumental activities of daily living, skills training, and community activities. Specific services provided by PSWs are determined based on a functional needs assessment of the individual, and are delivered pursuant to the individual's service plan. Like their APD HCW counterparts, I/DD PSWs are considered employees of the individuals they serve, but they are paid by the Department of Human Services.

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Can guardian be paid caregiver?

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In both the APD service system and the I/DD service system, the individual who receives in-home care services or his or her legal representative must participate in the development of a service plan that will set forth services to be provided, and must serve as the employer of the HCW or PSW.

A legal representative is defined in the HCBS rules as “a person who has legal authority to act for an individual.” For a person age 18 or over, a legal representative is “a guardian appointed by a court order or an agent legally designated as the health care representative, where the court order or the written designation provide authority ... to make the decisions indicated where the term ‘legal representative’ is used in this rule.” [OAR 411-004-0010 \(12\)](#).

Fulfilling obligations for development and authorization of the service plan

In the APD service system, development of a service plan for a recipient of in-home care services requires either that the individual has the ability to make an informed decision about the service plan, or the individual has a designated representative to make decisions on his or her behalf. [OAR 411-030-0050 \(2\)\(c\)\(D\)](#).

An individual with a guardian must have a representative designated for service planning. [OAR 411-030-0040 \(5\)\(c\)](#).

Individuals served by the I/DD service system receive their services pursuant to an annual Individual Support Plan (ISP). [OAR 411-317-0000 \(114\)](#).

The ISP is authorized and signed by the individual or by his or her legal representative or designated representative. [OAR 411-415-0070 \(e\)\(A\)](#).

The HCBS rules applicable to both APD in-home services and I/DD in-home services specify that the person-centered service plan must be developed by the individual, and as applicable, the legal or designated representative of the individual, and the person-centered service plan coordinator/case manager. [OAR 411-004-0030 \(2\)\(a\)\(B\)](#).

The service plan must reflect the written informed consent of the individual, or as applicable, the legal or designated representative of the individual, and must be signed by the individual or the legal or designated representative of the individual. [OAR 411-004-0030 \(2\)\(c\)\(N\),\(O\)](#)

Fulfilling obligations as employer of in-home care providers

A person who receives HCBS in-home services through the APD service system is considered the “consumer-employer” of his or her HCWs. [OAR 411-030-0020 \(14\)](#). Although DHS pays the HCW directly, the individual hires and manages his or her own HCWs. The obligations of a consumer-employer of HCWs include:

- Locating, screening, and hiring HCWs
- Supervising and training HCWs
- Scheduling HCWs’ leave and coverage
- Tracking and verifying hours worked
- Addressing performance deficiencies
- Firing unsatisfactory HCWs

If an individual receiving APD in-home care services is unable to perform these consumer-employer functions, the individual must have a designated representative who can carry out these duties on his or her behalf. [OAR 411-030-0040\(4\)\(a\)](#). An individual with a guardian must have a representative designated. [OAR 411-030-0040 \(5\)\(c\)](#).

Similarly, an individual who receives HCBS in-home services through the I/DD service system must demonstrate the ability to fulfill his or her obligations as the employer of a PSW, which are the same obligations listed above for client-employers of APD homecare workers. See [OAR 411-340-0135 \(5\)](#).

If DHS finds that an individual is unable to fulfill all of these duties, the individual or his or her guardian must either designate an “employer representative” to handle these duties on the individual’s behalf, or select a provider organization to deliver the services in lieu of hiring individual PSWs. [OAR 411-340-0135 \(6\)\(a\)](#).

Preventing conflicts of interest by paid in-home-care service providers

In order to prevent conflicts of interest, a paid HCW or PSW may not serve as the individual’s designated representative for purposes of developing and authorizing the individual’s service plan, nor for the purpose of fulfilling the individual’s obligations as the employer of his or her HCW or PSW. The HCBS rules state “[T]he person-centered service plan may not be developed by the provider of HCBS for individuals receiving Medicaid.” [OAR 411-004-0030 \(2\)\(a\)\(C\)](#).

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Can guardian be paid caregiver?

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With regard to the employer role, APD rules say “A representative may not be a paid caregiver for the individual they are representing.” [OAR 411-030-0040 \(5\)\(d\)](#). Similarly, the I/DD rules state: “An employer who is also the personal support worker of support must seek an alternate employer for purposes of the employment of the personal support worker.” [OAR 411-340-135 \(7\)\(b\)](#).

In the I/DD service system, prevention of conflicts of interest is more specifically addressed by a Developmental Disabilities Policy Transmittal released in 2015. [“Conflict of Interest,” APD-PT-15-009, March 3, 2015.](#)

Designating a representative

A designated representative is defined in the HCBS rules as “any adult, such as a parent, family member, guardian, advocate or other person” who is chosen by the individual or their legal representative and is authorized by the individual or legal representative to serve as the representative of the individual or as the representative of the legal representative “in connection with the provision of funded supports.” [OAR 411-004-0010 \(3\)\(a\)\(A\),\(C\)](#).

Although [OAR 411-004-0010 \(3\)\(b\)](#) says, “An individual or the legal representative of the individual is not required to appoint a designated representative,” as noted above there are circumstances when a designated representative is necessary to prevent conflicts of interest. The HCBS rules do not specify a particular method by which an individual or his or her legal representative may designate a representative for purposes of service planning or fulfillment of employer obligations.

DHS rules that are broadly applicable to DHS public benefit programs, including OSIPM HCBS, discuss the role of “Authorized Representative” at [461-115-0090](#). An authorized representative is defined as “an individual aged 18 years or older or an organization permitted by this rule to act on behalf of an applicant

or beneficiary in assisting the applicant or beneficiary with their application, renewal of eligibility, and other on-going communications with the Department.” An authorized representative is empowered to complete, sign, and submit applications and documents; and to receive notices and other communications from the department; and to act on behalf of the applicant or recipient by reporting information and submitting requests to the department. An authorized representative may be appointed by the individual or by a guardian, where applicable.

DHS provides a form for designating an authorized representative: [DHS/OHA Form MSC 0231 “Authorized Representative and Alternate Payee.”](#)

The state Office of Developmental Disability Services offers a form for designation of a representative for individuals with intellectual and developmental disabilities. The “ODDS Appointment of Designated Representative” form is available in the Developmental Disabilities Conflict of Interest Policy Transmittal referenced above (APD-PT-15-009; March 3, 2015). The I/DD Authorized Representative form includes language specifically authorizing the representative to participate in the development of the individual’s service plan (ISP) and to serve as the employer of record.

What are the implications for protected persons and guardians?

In summary:

- An individual’s chosen family member or friend, including the individual’s guardian, may work for the individual as a Medicaid-funded in-home care provider.
- Individuals who receive in-home services have certain obligations with regard to in-home care service planning and employment of in-home caregivers.
- A guardian is a legal representative who can stand in the protected person’s shoes for purposes of developing and authorizing a service plan and employing in-home care providers.
- In order to prevent conflicts of interest, a paid caregiver cannot be responsible for developing and authorizing the individual’s service plan nor for hiring and managing in-home care providers.
- If a protected person wants to select his or her guardian as a paid caregiver, then the individual or guardian must designate someone else as the individual’s representative for purposes of service planning and employing in-home caregivers.

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Can guardian be paid caregiver?

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Should a guardianship petition request authority for the guardian to make decisions about and delegate authority for the protected person's Medicaid HCBS services?

A guardian's authority with regard to a protected person's HCBS services is limited to powers conferred by the guardianship order. The definition of legal representative in the HCBS rule explicitly limits a guardian's authority with regard to HCBS services to powers conferred by the guardianship order: "The legal representative only has authority to act within the scope and limits of his authority as designated by the court or other agreement." [OAR 411-004-0020 \(12\)](#)

The rule further specifies that a legal representative is "a guardian appointed by a court order or an agent legally designated as the health care representative, where the court order or the written designation provide authority for the appointed or designated person to make the decisions indicated where the term 'legal representative' is used in this rule." [OAR 411-004-0020 \(12\)\(b\)](#). Thus, when a protected person receives or is expected to receive Medicaid-funded HCBS services, it is probably wise to include a provision in the guardianship petition that explicitly confers authority for the guardian to make decisions about and delegate authority for the protected person's Medicaid home and community-based care services.

If a guardianship order lacks these provisions, the guardian may still make decisions about the protected person's HCBS services if the guardian is a designated representative for the protected person. "Legal representatives acting outside of his or her authority or scope must meet the definition of designated representative." [OAR 411-004-0020 \(12\)](#)

But a "designated representative" is chosen by either the individual or his or her legal representative (guardian). If a protected person lacks capacity to designate a representative, and the guardianship order does not confer authority for the guardian to make decisions and delegate authority over the protected

person's HCBS services, who can appoint the guardian as the protected person's designated representative?

The APD rules explicitly provide that a guardian may designate himself or herself as the representative both for service planning purposes and as the consumer-employer of HCWs. [OAR 411-030-0040 \(5\)\(c\)](#).

The I/DD rules appear to be silent on this question. The Developmental Disabilities "Policy Transmittal on Conflict of Interest" cited above states: "If a legal representative does not believe that their guardianship authority allows for designating a representative to direct the provision of services the legal representative may select a separate employee or provider to provide the ODDS funded supports or seek further legal advice."

Does a guardian need court authority to hire in-home care providers when the guardian has a potential financial conflict of interest?

It appears that under both APD and I/DD rules, a guardian who is serving as a protected person's authorized representative may employ his or her own spouse as a paid in-home care provider for an adult protected person. For example, if a protected person's parents are married to each other, and one parent is guardian and designated representative for the individual's HCBS services, the guardian parent can hire the protected person's other parent (the guardian's spouse) to work as the protected person's in-home care provider. However, pursuant to the Oregon probate statute governing fiduciaries, before a guardian hires a person in whom the guardian has a financial interest to provide direct services to the protected person, the guardian must disclose the nature of the interest to the court. [ORS 125.221](#). If a guardian wants to hire his or her own spouse, parent, or child to provide services to the protected person, the guardian must obtain prior court approval. The statute sets forth the specific disclosures that must be made to the court in either of these instances.

What if two parents are co-guardians of a protected person who receives HCBS services? Can either or both of them be paid to provide Medicaid-funded in-home care services to the protected person?

If two parents are co-guardians of an adult protected person, and one parent/co-guardian is the protected person's HCBS designated representative, he or she can hire the other parent/co-guardian to provide in-home services to the protected person, as long as there is prior disclosure (and prior court approval, if the parents/co-guardians are married to each other). If the co-guardians designate a third party as the protected person's HCBS representative, then the designated representative can hire both parents as paid in-home care providers. ■

Guardian Partners enhances abuse-prevention programs

By Marc Kochanski, Executive Director, Guardian Partners



Marc Kochanski is the Executive Director of Guardian Partners. Previously he was the Manager of Volunteer Resources for Cascade AIDS Project.

Guardian Partners, a nonprofit focused on protecting vulnerable Oregonians under guardianship care, is expanding and improving its programs in the face of the COVID-19 pandemic. Among the service areas seeing enhancements are: development of new online courses, re-launch of case monitoring adapted for a virtual world, and expansion of programs to Tillamook County.

Improved online courses

Being appointed as a lay guardian or other fiduciary is a serious responsibility, often one the individual did not expect or plan for. Newly appointed fiduciaries benefit from additional education and support. In Oregon counties served by Guardian Partners, a new guardian attends a one-hour class and is well supported through the process. A person can register online or call to have our education coordinator assist them with course registration.

Due to pandemic restrictions, classes are currently offered online only, and the participant may watch whenever is convenient and can easily replay any portion for review. Class handouts are attached to the video as digital files. Participants are granted continued access to the course if they want to revisit or refresh their knowledge, and they can contact Guardian Partners staff if they have follow-up questions.

Each participant completes a course evaluation, which helps Guardian Partners refine and improve our trainings. When we receive a class evaluation, we file a certificate of completion with the court and a copy goes to the guardian.

Responses to content and instruction are overwhelmingly positive, with more than 80% of guardians reporting that they learned much more about decision-making for their protected person.

Historically, most of our classes were offered in person. While online versions were always available, most participants opted for live instruction. When the COVID-19 pandemic emerged, we were

able to pivot immediately to those online versions and maintain our education program throughout 2020 without interruption.

Remaking our online courses was a topic of discussion even before the pandemic, but it took on a new appeal and urgency as it became clear that learning would happen online for the foreseeable future. Courses that had previously been delivered as a film hosted on Vimeo will now be hosted on an online learning program called Thinkific. The experience will be more engaging and user-friendly, with the curriculum broken up into modules by topic, and a brief quiz to reinforce knowledge after each module. The modular format will make it easy to go back and review specific topics and will create natural breaks if the viewer doesn't wish to complete the course in one sitting. The films will benefit from higher production values and improved sound quality.

The Guardians of Adults class has been filmed in both English and Spanish and will include captions for those with impaired hearing. These new courses are expected to be operational in January 2021.

Case monitoring in a health crisis

COVID-19 restrictions prompted significant changes to our classes, but their impact on our case monitoring program was even more dramatic. Our volunteer monitors have always conducted their wellness interviews in person. Like many of us, Guardian Partners struggled to understand the health implications of the virus as well as the changing state and local restrictions. Except for a few cases, our monitoring program was put on hiatus in March. Over the summer we consulted with courts and partner agencies to develop a system of virtual monitoring that would keep our volunteers safe while gathering the information needed to ascertain the wellness of the protected person.

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The program was relaunched in August and all case monitoring—as well as training of new monitors—is now being conducted virtually.

Another important change to the monitor program was the addition of a third interview as a requirement to complete a case. Normally, a monitor would interview the guardian and protected person, then draft a report on their findings. Our virtual monitoring model requires a third interview, and volunteers are encouraged to speak with a contact such as a doctor, therapist, teacher, or case manager before filing their report. Gathering this additional informed opinion is an attempt to close the deficit of information which can result from not visiting in person.

Since the monitoring program was restarted in August, 12 new volunteer monitors have been trained. Early feedback from volunteers on the new process has been positive. By November, the Guardian Partners monitor team had resumed its pre-pandemic pace of submitting two to three case reports each week. Sadly, but perhaps unsurprisingly, in December we had our first instance in which the case could not be completed because the protected person died of COVID-19 before the monitor could speak with them.

The impact a monitor makes on the life of a protected person can be profound. Program outcomes confirm that there is a need for oversight of guardianships. Often, when a monitor finds a guardian who is falling short in their duties, it is not because of malice on the guardian's part, but rather due to a lack of resources or simply being overwhelmed. In other cases, the monitor finds more overt abuse or neglect and their report can prompt critical changes including removal or replacement of the guardian. In still other cases, the protected person is found to be so healthy and stable that the guardianship can be made less restrictive or eliminated altogether, as happened in one 2020 case. In all cases, the monitor report contains information the court might not have gathered otherwise, and we have found that one in four cases require additional intervention.

Expansion and looking ahead

Guardian Partners was established in 2013 with the express goal of serving all 36 Oregon counties.

Guardian Partners now serves five counties: Clackamas, Lane, Marion, Multnomah and Tillamook. We took a significant step toward that goal this year with expansion to Tillamook County. Judge Mari Trevino and Judge Jon Hill are champions for those under guardianship and have been strong advocates and collaborators. After local rules were amended, we saw our first course participants from Tillamook County in April. Expansion of monitoring typically follows a bit after education, and that delay was exacerbated by the pandemic. However, at the time of this writing our first Tillamook case is in the process of being assigned to a Guardian Partners monitor. We believe the complement of training for new guardians paired with the oversight provided through case monitoring is the best way to serve a community, and we look forward to growing our relationship with the people of Tillamook County.

While most participants enroll by court mandate, any member of the public may take our courses. Some counties where we do not have an official relationship will refer guardians to us on an ad hoc basis, which we encourage. Our new online courses make it much easier to serve guardians statewide, and we hope courts will increasingly make use of this resource.

We look ahead to the coming year with enthusiasm, even as COVID-related challenges linger. We aim to double the size of our case monitor team, to reach a total of 50 trained volunteers. We hope to continue the remaking of our online classes and anticipate our Conservator course will receive this treatment next. As part of our commitment to constantly refine and improve our education program, we will explore offering classes via webinar, which would combine the benefits of our live classes with the realities and the convenience of online learning.

Guardian Partners has been fortunate. While the pandemic demanded a great deal of adaptation and adjustment, we have been able to carry on with our important work supporting and protecting those under guardianship care. Our strongest potential for growth is in the expansion of our volunteer case monitor team. While a background in law, social work, or healthcare can be helpful, none of these are required as long as the candidate demonstrates emotional maturity, strong communication skills, and the fortitude to conduct a thorough wellness interview. ■

Anyone interested in volunteering or supporting the education or development efforts of Guardian Partners should contact Executive Director Marc Kochanski at marc@guardian-partners.org or 971.409.1358.

Updates to spousal impoverishment figures and important elder law numbers as of January 1, 2021

By Darin Dooley, Attorney at Law



Darin Dooley is a partner with the Lake Oswego firm of Draneas Huglin Cooper LLC.

He practices elder law, estate planning and administration, and probate.

There were some important changes for Medicaid and Supplemental Security Income (SSI) eligibility as of January 1, 2021.

Supplemental Security Income (SSI):

The SSI benefit standard increased to \$794/month for an individual and \$1,191/month for a couple.

Medicaid spousal impoverishment figures: The minimum community spouse resource allowance (CSRA) increased to \$26,076 and the new maximum CSRA is \$130,380. [OAR 461-160-0580](#). The maximum monthly maintenance needs allowance is \$3,259.50. The minimum monthly maintenance needs allowance remains \$2,155 until July 1, 2021.

The personal needs allowance increased to \$64.94/month for nursing home residents and \$177/month for residents in other community-based care settings. The personal needs allowance for an individual receiving long-term care services who is eligible for Veterans Administration (VA) benefits based on unreimbursed medical expenses remains \$90/month and is only allowed when the VA benefit has been reduced to \$90.

The room and board rate for waived community-based care facilities increased to \$617/month. [OAR 461-155-0270](#).

The need standard for an individual who receives in-home services is the OSIPM maintenance standard (\$794 per month in 2021) plus \$500, which comes to \$1,294 per month. [OAR 461-160-0620](#).

The long term care income cap for 2021 is \$2,382/month.

Disqualifying Transfer Divisor: The average nursing home private pay rate for calculating the ineligibility period for a transfer of assets at less than fair market value after October 1, 2020 remains \$9,551 per month. [OAR 461-140-0296](#).

Medicaid Home Equity Limits: For an individual, the equity limit in the home is \$603,000. Oregon uses the minimum value as the home equity limit. There is no equity limit if a spouse or child age 21 or younger or relative dependent on the individual for support occupies the home. [OAR 461-145-0220](#).

Medicare updates

- Hospital Part A deductible per illness spell: \$1,484
- Skilled nursing facility co-insurance days 21 to 100: \$185.50/day
- Part B premium: \$148.50/month (income up to \$85,000 single and \$170,000 married couple) However, some people who get Social Security benefits pay less than this amount: \$130/month on average
- Part B deductible: \$203/year
- Part D premium: varies by plan ■

Instructions for posting the CLE credits for the MCLE process

1. Log on to your Member Dashboard. at <https://hello.osbar.org/>
2. Click on MCLE Reporting.
3. Click Add Activity to Transcript.
4. Click Accredited Group Course.
5. Find the Program in the database search on your screen.
6. Click on the live or recorded course.
7. Answer the question regarding whether you completed all or part of the program.
8. Add the program to your transcript.

Effective September 18, 2020, the Supreme Court ordered amendments to the MCLE Rules and Regulations that move the MCLE compliance deadlines to the spring. The new deadlines are at: <https://www.osbar.org/docs/mcle/MCLEDeadlineChangesFAQ.pdf>

Elder Law Section 2020 Annual Report

By the 2020 Executive Committee: Theresa Hollis (Chair), Julie Meyer Rowett (Chair-elect), Darin Dooley (Past Chair), Andrea Ogston (Treasurer) Anastasia Yu Meisner (Secretary), Corey Driscoll, Katherine Gapinski, Christian Hale, Christopher D. Hamilton, Alana Hawkins, Rebecca Kueny, Kay Hyde-Patton, Jennifer Kwon, Matthew McKean, Julie C. Nimnicht, and Monica Pacheco

Executive Committee Meetings

The Elder Law Section Executive Committee meets six times a year and is comprised of five officers and eleven members for a total of sixteen. Our May, July, and September meetings were held via conference call due to the COVID-19 pandemic. Our November meeting was held via Zoom so that it could be recorded to comply with Public Meetings Law and HB4212 that temporarily requires recording in place of the physical location.

Subcommittees

Most Elder Law Section activities take place through the work of specific Section subcommittees.

CLE Subcommittee: The CLE subcommittee is responsible for planning Section continuing legal education (CLE) programs. This year due to the COVID-19 pandemic, we were unable to hold our very popular unCLE, typically held in May in Eugene, as well as a new CLE that would have focused on elder financial abuse litigation. The subcommittee was able to pivot quickly from in-person CLE to a webinar format for our fall CLE entitled "Guardianships and Conservatorships." Topics included guardianship and conservatorship basics, alternatives to protective proceedings, rights of protected persons in Oregon, and legal ethical issues for elder law attorneys.

Newsletter Subcommittee: The quarterly Elder Law Newsletter, professionally edited by Carole Barkley, is a major benefit provided by the Section to its members. The subcommittee's members and the editor determine each issue's focus and recruit writers for specific topics to fit the focus. The newsletter is distributed electronically, saving money and environmental resources. Issues from past years are available on the Section's website.

Scholarship Subcommittee: The Elder Law Section provides scholarships to our CLEs to new lawyers and those earning a smaller annual salary. We provided scholarships to five participants for our Fall CLE in October 2020.

Legislative Subcommittee: During 2020 the subcommittee worked with the Section, the OSB, and other stakeholders to monitor and participate in legislative proposals that affect people who are elderly, incapacitated, or financially incapable.

Budget

As of October 31, 2020, the Elder Law Section had 539 paid memberships and 14 complimentary memberships (given to judges, court staff, and OSB members of 50 or more years). This is a 3.5% decrease from 2019. Annual dues remain unchanged at \$25 for 2020. The Section maintains a reasonable reserve to allow for special projects from time to time, occasional paid CLE speakers (as we had in 2019), additional CLE scholarships, and to assure a continued ability to offer newsletters and CLEs. The Section made contributions in 2020 to the Oregon Minority Lawyers Association, Guardian Partners, Disability Rights Oregon, and Oregon Lawyers Assistance Foundation.

Legislative issues

Important legislative issues monitored in 2020 included HB 4212A, Remote Online Notarization (RON), and the Advance Directive workgroup.

Matters considered/Matters pending

It is anticipated that Section members will continue to be involved with legislative proposals during the 2021 legislative session. Planning will soon begin for our 2021 CLE events and the newsletter themes and topics are being discussed for 2021. Oregon's elderly population has been severely affected by the pandemic. Elder law attorneys have had to find creative ways to practice, including video conferencing and extensive phone conferences. To reduce or avoid personal contact with our clients, we have had to come up with creative "sign at home" or "walk through signing" strategies. 2020 has been a challenge for the entire country and the population our Section serves has been hit very hard.

Recommendations for Upcoming Year

The Elder Law Section will continue striving to increase access to justice by providing scholarships to our CLEs, keeping our Section fee reasonable, encouraging Section members to contribute to the Face Masks for the Courthouse program, monitoring relevant legislation, and donating to causes that assist and support elders, people experiencing disabilities, and minorities. ■

Resources for elder law attorneys

CLE Seminars

Trust and Estate Planning Issues in Divorce

January 27, 2021/10:00–11:00 AM
OSB Audio Webinar

[Information and registration](#)

Equity & Diversity in Law Practice: Best Practices for Law Firms

January 28, 2021/10:00–11:00 AM
OSB Audio Webinar

[Information and Registration](#)

Mediation, Settlement & Judicial Settlement Conferences

January 28, 2021/12:00–1:00 PM
Multnomah Bar Zoom Presentation

[Information and Registration](#)

Ethics and Client Money: Trust Funds, Expenses, Setoffs, and More

January 29, 2021/10:00–11:00 AM
OSB Audio Webinar

[Information and Registration](#)

Estate Planning for Digital Assets

February 16, 2021/10:00–11:00 AM
OSB Audio Webinar

[Information and Registration](#)

Lawyer Ethics and Texting

February 19, 2021/10:00–11:00 AM
OSB Audio Webinar

[Information and Registration](#)

How to Fix a Broken Trust: Decanting, Reformation, and Other Tools

February 24, 2021/10:00–11:00 AM
OSB Audio Webinar

[Information and Registration](#)

Ethical Issues for Small Law Firms: Technology, Paralegals, Remote Practice, and More

February 26, 2021/10:00–11:00 AM
OSB Audio Webinar

[Information and Registration](#)

NAELA 2021 Annual Conference

March 24–26, 2021
Online

[Information and Registration](#)

Websites

Elder Law Section website

<https://elderlaw.osbar.org>

Links to information about federal government programs and past issues of the Section's quarterly newsletters

National Academy of Elder Law Attorneys (NAELA)

<https://www.naela.org>

Professional association of attorneys dedicated to improving the quality of legal services provided to elders and people with special needs

National Center on Law and Elder Rights

<https://ncler.acl.gov>

Training and technical assistance on a broad range of legal issues that affect older adults

OregonLawHelp.org

<https://oregonlawhelp.org>

Helpful information for low-income Oregonians and their lawyers

Aging and Disability Resource Connection of Oregon

<https://www.adrcforegon.org/consite/index.php>

Includes downloadable Family Caregiver Handbook, available in English and Spanish versions

Administration for Community Living

<https://acl.gov>

Information about resources that connect older persons, caregivers, and professionals to federal, national, and local programs

Big Charts

<https://bigcharts.marketwatch.com>

Provides the price of a stock on a specific date

American Bar Association Senior Lawyers Division

For elder law attorneys age 62+

https://www.americanbar.org/groups/senior_lawyers/

National Elder Law Foundation

<http://www.nelf.org>

Certifying program for elder law and special-needs attorneys

National Center on Elder Abuse

<https://ncea.acl.gov>

Guidance for programs that serve older adults; practical tools and technical assistance to detect, intervene, and prevent abuse

Common Scams That Target the Elderly

Special report on scams related to covid-19

<https://www.seniorliving.org/research/common-elderly-scams/>

Important elder law numbers

as of
January 1, 2021

Supplemental Security Income (SSI) Benefit Standards	Eligible individual\$794/month Eligible couple.....\$1,191/month
Medicaid (Oregon)	Asset limit for Medicaid recipient.....\$2,000 Burial account limit.....\$1,500 Long term care income cap.....\$2,382/month Community spouse minimum resource standard \$26,076 Community spouse maximum resource standard \$130,380 Community spouse minimum and maximum monthly allowance standards.....\$2,155/month; \$3,259.50/month Excess shelter allowanceAmount above \$646.50/month SNAP utility allowance used to figure excess shelter allowance\$442/month Personal needs allowance in nursing home \$64.94/month Personal needs allowance in community-based care.....\$177/month Room & board rate for community-based care facilities..... \$617/month OSIP maintenance standard for person receiving in-home services\$1,294 Average private pay rate for calculating ineligibility for applications made on or after October 1, 2020.....\$9,551/month
Medicare	Part B premium \$148.50/month* Part D premiumVaries according to plan chosen Part B deductible \$203/year Part A hospital deductible per spell of illness.....\$1,484 Skilled nursing facility co-insurance for days 21-100\$185.50/day

* Premiums are higher if annual income is more than \$85,000 (single filer) or \$170,000 (married couple filing jointly).



Elder Law Section

Newsletter Committee

The *Elder Law Newsletter* is published quarterly by the Oregon State Bar's Elder Law Section: Julie Meyer Rowett, Chair. Statements of fact are the responsibility of the authors, and the opinions expressed do not imply endorsement by the Section.

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